

TENTATIVE RULINGS for CIVIL LAW and MOTION

August 12, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Abrahams v. Taser International, Inc., et al.**

Case No. CV CV 09-333

Hearing Date: **August 12, 2010** **Department Fifteen** **9:00 a.m.**

The application to admit Holly Gibeaut *pro hac vice* is **DENIED WITHOUT PREJUDICE**. The Court treats the Declaration of Holly Gibeaut as the verified application to appear as counsel *pro hac vice*. There is no proof of service showing service of a copy of the application papers on the State Bar of California at its San Francisco office. (Cal. Rules of Court, rule 9.40(c)(1).) It has not been established that the applicant paid the \$50.00 fee to the State Bar of California. (Cal. Rules of Court, rule 9.40(e).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Branner v. The Regents of the University of California**

Case No. CV CV 08-2007

Hearing Date: **August 12, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (c) and (d); *Scharf v. Regents of Univ. of Cal.* (1991) 234 Cal.App.3d 1393, 1398, fn. 3; *Chas. L. Harney, Inc. v. State* (1963) 217 Cal.App.2d 77, 85-86; *Kashmiri v. Regents of Univ. of Cal.* (2007) 156 Cal.App.4th 809, 822, fn. 7.) The Court takes notice of the timing, nature and scope of the grievances, claims or actions and the context in which they were made or brought, but does not take notice of the truth of the facts stated therein.

Defendant's demurrer to the third amended complaint: The demurrer based on failure to exhaust administrative remedies is **OVERRULED**. Defendant failed to specify the bylaw, policy, or rule that prescribes the administrative remedy for the various claims raised in the third amended complaint. It has not been established that an administrative remedy existed for

plaintiff's various claims. For the same reason, the motion to strike based on failure to exhaust administrative remedies is also **DENIED**.

As it has previously done, the Court rejects the contention that plaintiff had abandoned his intentional infliction of emotional distress cause of action.

The demurrer based on statute of limitations is **SUSTAINED WITH LEAVE TO AMEND**. The conduct alleged in paragraphs 8 through 10 of the third amended complaint occurred prior to August 7, 2006. Taking as true the allegation that as of January 11, 2007, the Regents made clear to plaintiff that it would take no further action on plaintiff's complaints, under the continuing violation doctrine, the statute of limitations for the course of conduct plaintiff complains about as of January 11, 2007, began to run on that date. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823.) For purposes of "saving" conduct that occurred before August 7, 2006, from the time bar pursuant to the continuing violation doctrine, the critical question is whether plaintiff alleges any wrongful conduct within the period August 7, 2006, through January 11, 2007. The third amended complaint does not allege sufficient facts for the Court to find an alleged unlawful act/omission within this critical period. The third amended complaint alleges that certain conduct occurred in 2006 and 2007 but does not specify when in 2006 and 2007 such conduct occurred. (TAC ¶¶ 12-13.)

The Court will give plaintiff a final chance to amend his complaint to show that some unlawful conduct occurred within the relevant time period. If plaintiff chooses to amend his complaint, he must allege sufficient facts to state an intentional infliction of emotional distress cause of action based on the conduct that occurred within the critical period. Because leave to amend is granted, the Court does not decide the motion to strike based on statute of limitations.

The Regent brings a general demurrer. (See Notice of motion filed on July 6, 2010.) A general demurrer does not lie to only part of a cause of action. (Hon. William F. Rylaarsdam, Hon. Lee Smalley Edmon, et al., Calif. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2010) ¶ 7:42.2.) Accordingly, the demurrer based on grounds that challenge only a part of the intentional infliction of emotional distress cause of action is **OVERRULED**.

The demurrer based on Workers' Compensation Act preemption is **OVERRULED**. Given the nature of plaintiff's allegations from the beginning of this lawsuit, it cannot reasonably be argued that it is unclear whether plaintiff is alleging racial bias. It may be that plaintiff cannot establish his claim of harassment or discrimination and, for that reason, his intentional infliction of emotional distress claim would be preempted by the Workers' Compensation Act. However, the Court cannot make this determination at the demurrer stage.

The demurrer based on failure to allege sufficient facts to show that plaintiff suffered severe emotional distress is **OVERRULED**. (Third amended complaint ¶ 22.)

The demurrer based on *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, and *Lawson v. Superior Court of* (2010) 180 Cal.App.4th 1372 is **OVERRULED**. None of these cases hold that the plaintiff must

specifically identify the alleged wrongdoers in the complaint. The third amended complaint alleges sufficient facts to show a basis for vicarious liability.

Plaintiff shall file a fourth amended complaint, if any, **by August 23, 2010.**

Defendant's motion to strike: The motion to strike allegations concerning "personnel actions" is **DENIED**. (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Omeeghan v. Forecast Group, L.P., et al**
Case No. CV CV 09-1456

Hearing Date: **August 12, 2010** **Department Fifteen** **9:00 a.m.**

Cross-defendant Holmes-Hally Industries dba The Garage Door Center's unopposed motion for determination of good faith settlement is **GRANTED**. (Code Civ. Proc., § 877.6.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.